

Article - Real Property

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§11A–112.

(a) Any developer or the developer's designated project broker shall deliver a public offering statement to the purchaser before transfer of the time-share and no later than the date of the contract.

(b) (1) A public offering statement together with a fee equal to \$1 for each time-share to be offered for sale, not to exceed \$500, must be filed with, and approved by, the Secretary of State prior to being delivered to any time-share purchaser. The Secretary of State shall determine whether the public offering statement satisfies the requirements of this title, and shall either approve or reject within 45 days of receipt. After approval, the Secretary of State shall promptly issue an order of approval. If the Secretary of State rejects a public offering statement, he shall promptly issue a written order stating the reasons for rejection. The Secretary of State's failure to act within 45 days of receipt shall be deemed an approval of the public offering statement. A developer may consent in writing to an extension of the review period for approval or rejection.

(2) Rejection of a public offering statement shall not act as a bar to reapplication. A reapplication which amends the original statement to comply with the stated reasons for rejection and which is accomplished by an additional fee of \$100 shall be approved by the Secretary of State upon determination that the amended public offering statement satisfies the requirements of this title.

(c) (1) A developer shall file copies of any changes to the information required by this section. Those changes must be approved by the Secretary of State before the changes are distributed to the public.

(2) The Secretary of State shall either approve or reject the changes within 10 days of receipt. The Secretary of State's failure to act within said 10 days shall be deemed an approval of such changes.

(d) (1) The Secretary of State may adopt any regulations necessary to implement and enforce this section.

(2) The Secretary of State may prescribe forms and procedures for submitting public offering statements.

(3) The Secretary of State shall require the applicant to identify all persons who prepared any part of the public offering statement.

(e) Any person who provides significant information contained in the public offering statement is liable for any false or misleading statement or for any omission of material fact in the statement which he provided or should have provided. In addition to other applicable penalties, any person who knowingly violates this subsection, or who disseminates to the public and had actual knowledge of such statement or omission, or who, in the exercise of reasonable care, should have known of such statement or omission, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$10,000, 6 months imprisonment, or both.

(f) A public offering statement shall contain:

(1) A cover page stating only:

- (i) The name and location of the time-share project;
- (ii) A statement that the project is a time-share project; and
- (iii) The following, in conspicuous type:

“This public offering statement contains important matters to be considered in acquiring a time-share. The statements contained herein are only summary in nature. A prospective purchaser should refer to all references, exhibits thereto, contract documents, and sales materials. You should not rely upon oral representations as being correct. Refer to this document and accompanying exhibits for correct representations. The seller is prohibited from making any representations which conflict with those contained in the contract, this public offering statement, and the time-share instrument.”;

(2) A summary of all statements required to be in conspicuous type in all exhibits to the offering statement;

(3) A separate index of the contents and exhibits of the public offering statement;

(4) A description of the time-share plan, including:

(i) The name and principal address of the developer and the location of the time-share project;

(ii) A general description of the time-share project and the time-share units, including the number of units in the time-share project and any larger project of which it is a part, and the schedule of commencement and completion dates of all improvements;

(iii) As to all units owned or offered by the developer in the same project:

1. The types and numbers of units;
2. Identification of units that are time-share units;
3. The types and durations of the time-share;
4. The maximum number of units that may become part of the time-share project, if known; and
5. A statement of the maximum number of time-shares that may be created or that there is no maximum;

(iv) Copies and a brief narrative description of the significant features of the time-share instrument and any documents referred to in the instrument other than any plats and plans, copies of any contracts or leases to be signed by the purchaser at closing, and a brief narrative description of any contract or lease that will or may be subject to cancellation by the owner of a time-share under § 11A-114 of this title;

(v) The identity of the managing entity and the manner, if any, whereby the developer may change the managing entity or its control;

(vi) A balance sheet for the time-share estate project, that is prepared by an independent certified public accountant, containing information effective as of the close of the immediately preceding fiscal year, or the fiscal year immediately before the last one if the statement is distributed within 90 days of the end of a fiscal year, and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first transfer to a purchaser, a statement of who prepared the budget, and a statement of the budgetary assumptions concerning occupancy and inflation factors. The budget shall include:

1. A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements;
2. A statement of any other reserves;
3. The projected time-share expense liability by category of expenditures for the time-share units; and

4. The projected time-share expense liability for each time-share;

(vii) A description of time-share expenses, the current amounts assessed, and the method and formula for changes;

(viii) Any services which the developer provides or expenses he pays and which he expects may become at any subsequent time a time-share expense and the projected time-share expense liability attributable to each of those services or expenses for each time-share;

(ix) Any initial or special fee due from the time-share purchaser at closing, together with a description of the purpose of the fee and the method of its calculation;

(x) A statement of any liens, defects, or encumbrances on or affecting the title to the time-share units;

(xi) A description of any financing offered by the developer;

(xii) The terms and significant limitations of any warranties provided by the developer, including statutory warranties and limitations on enforcement of damages;

(xiii) A statement that:

1. Subject to the provisions of § 11A-114(a)(3) of this title, within 10 days after receipt of a public offering statement or signing a contract or the time-share unit meets all building requirements and is ready for occupancy, whichever is latest, a purchaser may cancel the contract for purchase of the time-share from the developer; and

2. If a developer fails to provide a public offering statement to the time-share purchaser before transferring the time-share and the purchaser elects to cancel the contract, the purchaser is entitled to recover from the developer 110 percent of the sales price of the time-share actually paid by the purchaser;

(xiv) A description of any unsatisfied judgments against the developer or the managing entity, the status of any pending suits involving the sale or management of real estate to which the developer or an affiliate of the developer or the managing entity is a defending party, and the status of any pending suits, of which the developer has actual knowledge, of significance to the time-share project;

(xv) A statement that a bond or letter of credit is required under § 11A-116 of this title, and that any deposit made in connection with the purchase of a time-share will be held in an escrow account or a trust account until expiration of the rescission period or any later time specified in the contract, and will be returned to the purchaser if the purchaser cancels the contract;

(xvi) Any restraints on transfer of time-shares or portions thereof;

(xvii) A description of the insurance coverage provided for the benefit of time-share owners;

(xviii) Any facility fees;

(xix) The extent to which financial arrangements have been provided for completion of all promised improvements;

(xx) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other time-share owners of the same time-share unit or the developer, managing entity, or association; and

(xxi) A description of the rights and remedies provided in the time-share instrument for a time-share owner who is prevented from enjoying exclusive occupancy of a time-share unit, or a statement that none is provided in the instrument; and

(5) If the time-share owners are to be permitted or required to become members of or to participate in any exchange program, a statement containing the information set forth in § 11A-120 of this title.

(g) A developer shall promptly amend the public offering statement to report any material change in the required information. Insofar as the developer relies in good faith on information provided by others in making the required disclosures about exchange programs, he is responsible for a misrepresentation only if he has knowledge of its falsity.

(h) (1) At any time that a time-share project is registered with the Securities and Exchange Commission of the United States, a developer satisfies all requirements relating to the preparation of a public offering statement under this section if he delivers to the time-share purchaser and files with the Secretary of State and the Commission a copy of the public offering statement filed with the Securities and Exchange Commission if that contains substantially the same information as is required in a public offering statement under this title.

(2) The mere offering of a time-share or the offering of an exchange program in conjunction with the offering or sale of a time-share in this State shall not constitute a security under the laws of this State.

(i) (1) (i) In the case of a time-share situated wholly outside of this State, an application for registration of a public offering statement with the Secretary of State that has been approved by an agency in the state where the time-share is located and that substantially complies with the requirements of this title may be accepted for registration at the discretion of the Secretary.

(ii) The Secretary of State may require additional information, before accepting a registration under this subsection, to assure adequate disclosure.

(2) If there is no out-of-state agency where the time-share is located that has approved the public offering statement, the application for registration of the out-of-state time-share shall consist of the public offering statement described under this section and the application form prescribed by the Secretary of State.

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